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IN THE

Supreme Court of the United States

OCTOBER TERM — 1971

No. 71-1330

HARRY M. KATZ,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR REHEARING

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The Petitioner, HARRY M. KATZ, pursuant to Rule 58, Supreme Court Rules, files this his Petition for Rehearing directed to the Order of this Honorable Court in this cause dated June 26, 1972, denying Petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

In the Petition for Writ of Certiorari, we demonstrated that the uncontradicted evidence presented at the trial in this cause indicates that Dr. Katz' practice of making "rounds" was in accord with accepted medical practice. We argued that counsel for the Government converted this practice into criminal conduct without prior notice to Petitioner and that, therefore, Petitioner was convicted in spite of fundamental principles of due process.

The method employed by Government counsel at the trial to obtain the conviction of Petitioner consisted of making a specious and artificial distinction between

"rounds" and "meaningful hospital visits." Even in its Memorandum for the United States in Opposition, filed herein, the Government has continued to argue in terms of such a distinction, as is evidenced by the Government's recitation of testimony that Petitioner "would see all of the approximately 30 patients in the 15-room facility, within 15 or 20 minutes." (Memorandum, page 5) The Government has ignored the fact that there was absolutely no evidence at the trial to indicate that Dr. Katz was, or should have been, aware that such conduct might be considered criminal.

Since the filing of our original Petition, previously unavailable evidence supporting Dr. Katz' practice of making "rounds" has come to our attention. Specifically, on a typical day in the life of Dr. Michael DeBakey, one of the country's most respected heart surgeons, we find that Dr. DeBakey may make "rounds" in which he visits 37 patients in 30 minutes.[1] Are these visits "meaningful hospital visits? "If some of the 37 patients seen by Dr. DeBakey are Medicare patients, would he be subject to prosecution for Medicare fraud for claiming reimbursement for hospital visits to those patients? If so, what notice does he have that his conduct might be considered criminal? If not, how can the prosecution of Petitioner in this case be justified?

Regardless of the obvious injustice of convicting the Petitioner of following an accepted medical practice, the jury could very well have been led to believe by Government counsel that there in fact exists a distinction between "rounds" and "meaningful hospital visits" and, on that basis, could have reached their verdict. This procedure is such a departure from fundamental

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[1] Schanche, Don A., "One Day in the Life of a Heart Surgeon," *Reader's Digest*, page 56 (July, 1972).

due process that no remedy short of reversal of the conviction can be consistent with basic principles of criminal justice. Accordingly, we respectfully request this Court to reconsider its Order Denying the Petition for Writ of Certiorari and, upon reconsideration, grant said Petition.

CERTIFICATE OF COUNSEL

The undersigned counsel for Petitioner, pursuant to Rule 58, hereby certify that this Petition for Rehearing is presented in good faith and not for delay[2] and that the Petition is restricted to the grounds specified in said Rule.

FOWLER, WHITE, GILLEN, HUMKEY, KINNEY AND BOGGS, P.A.
Post Office Box 1438
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By: _____
JAMES E. THOMPSON

By: _____
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[2] No Stay of Mandate of this Court has been sought.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true copies of the foregoing Petition for Rehearing have been furnished by mail to Solicitor General, Department of Justice, Washington, D. C. 20530; Bernard L. Dempsey, Jr., Esquire, Assistant United States Attorney, Post Office Building, Tampa, Florida 33602; and to Edward W. Wadsworth, Clerk, United States Court of Appeals, Fifth Circuit, Room 408, 400 Royal Street, New Orleans, Louisiana 70130, on this _____ day of July, 1972.

_____

Attorney